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Docket No. 80-2156

In the Supreme Court of the United States

October Term, 1980

GENERAL DEVELOPMENT & SHIPPING
ENTERPRISES CO., LTD.
Petitioner,

V.

STEPHEN J. MOREWITZ,
etc., et al
Respondent

RESPONDENT'S BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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INTRODUCTION

Appendix references that follow are to Petitioner's Appendix at the back of its Petition for Writ of Certiorari. The District Court decision of which G.D.S.E. complains (A5-13) was reached by District Judge John A. MacKenzie after a full dress evidentiary hearing in open court at which time each side had the opportunity to put in the record all evidence which it had supporting its position. (R. Vol. X, pages 14-15 and 39-51) Yet, none of the factual allegations made by Petitioner G.D.S.E. in its Petition for Writ of Certiorari give citations to the record and to a large extent G.D.S.E.'s said factual allegations are not supported by the record.

Moreover, although G.D.S.E.'s Appendix does not so indicate, the depositions of its attorney Domvros and its

ultimate owner Tsourinakis as printed in its Appendix are incomplete and in some instances inaccurate.

THE QUESTIONS PRESENTED

1. Whether G.D.S.E. had sufficient contacts with the State of Virginia so as to subject it constitutionally to the jurisdiction of the District Court below?

2. Whether under the facts of this case it was an abuse of discretion for the District Court below to exercise its discretionary jurisdiction and for the Court of Appeals below to affirm that exercise of discretionary jurisdiction?

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Exhibits Annexed to this Brief:

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The General Maritime Law 2

STATEMENT OF FACTS

On December 18, 1975, the SS IMBROS, sailing under the flag of Cyprus[1] was lost with all hands in the Atlantic Ocean off the East Coast of the United States in the area known as the Bermuda Triangle. She had been carrying a cargo of railroad ties loaded at Mobile, Alabama, to Port Cartier, Quebec, Canada. At the time of her loss the IMBROS had a multinational crew, including ten Greeks, two Hondurans, three Nigerians, two Pakistanis, one Egyptian and one Jordanian, but no Cypriots.

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[1] The SS IMBROS had never been in a Cyprus port, but was frequently in U.S. ports. (Deft's. Ex. 1 of 2/7/78 and Agreed Ex. 75 of 5/22/79, page 19, R. Vol. XII)

Respondent, the Administrator d.b.n. of the estates of four Greek crewmen, two Honduran crewmen, three Nigerian crewmen and one Pakistani crewman, was the Plaintiff in three suits filed in the District Court below seeking damages for wrongful death under The Death on the High Seas Act, 46 U.S.C. 761, et seq., The Jones Act, 46 U.S.C. 688, 54 Stat. 1693, The General Maritime Law and/or Cyprus Law.[2] (Hereinafter Respondent will be referred to as "Plaintiff")

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[2] CA-76-103-NN was filed 7/14/76 on behalf of the dependents of the four Greek seamen (NR 1). CA 77-63-NN and CA 77-95-NN were filed 6/29/77 and 8/31/77 respectively on behalf of the dependents of the two Honduran seamen (NR 308 & NR 327). Intervening Complaints in CA 76-103-NN on behalf of the dependents of the three Nigerians and the Pakistani were filed 1/9/78, 2/23/78 & 3/6/78. (NR 156, NR 174 and NR 181) The three cases were consolidated in 9/25/78. (NR 213)

Plaintiff's decedents Marangos and Markatos and nine other crewmen had been shipped aboard SS IMBROS in U.S. ports. Plaintiff's other decedents were employed in Honduras, Nigeria and Belgium.[3] (Agreed Ex. 4 of 5/22/79, R. Vol. XII)

Decedents resided in the countries of which they were citizens and left surviving dependent relatives in their respective countries. In addition, decedent Passalis is survived by his widow and infant child who are

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[3] While the Greek seamen had previously signed individual employment contracts in Greece prior to being sent to join the M/V IMBROS in the Western Hemisphere, said contracts neither called for application of Greek Law nor recourse to Greek Courts, muchless did they call for exclusive jurisdiction by Greek Courts. (Deft's. Ex. 5 of 2/7/78, R. Vol. XII; Appendix to Pltf's. Brief of 2/6/78, App. 5, R. Vol. XIII.)

citizens and residents of Yugoslavia. (Pltf's. Ex. 14 of 1/3/80 and attached Exhibits A and C, R. Vol. XII)

The SS IMBROS was one of ten ships managed or operated by G.D.S.E., a Cyprus corporation, which has no office, place of business or employees in Cyprus. (P. 8 & 19 of Agreed Ex. 75 of 5/22/79, R. Vol. XII), G.D.S.E. had an office in Greece with 26 employees at the time M/V IMBROS was lost (A69), but now has no office in Greece or apparently anywhere else. (NR 273). G.D.S.E. and each of the ten ships was ultimately owned by George A. Tsourinakis, a Greek citizen and resident, whose present whereabouts are unknown. (NR 273)

On March 26, 1979, the District Court ruled that G.D.S.E. was the owner pro hac vice of SS IMBROS. (NR 276)

Imbros Shipping Co., Ltd., the record owner of SS IMBROS, was a mere paper corporation with no separate existence of its own. (NR 82, para. 2 of two page Affidavit) Indeed, Imbros Shipping never even had any meetings of its stockholders or directors during its entire existence. (Pltf's. Request for Admission 11/28/77, Requests 101 & 102, R. Vol. XIII)

The lack of a separate existence for Imbros Shipping Co., Ltd. and the other corporate record owners of Tsourinakis vessels is shown by Tsourinakis' testimony that after SS IMBROS was lost he collected its hull insurance and with the proceeds:

"I paid the loan balance of the vessel at that time. I paid various mortgage obligations and I think that I paid brokers. The balance I distributed to the other vessels at that time." (Agreed Ex. 75, of 5/22/79, p.27, R. Vol. XII)

G.D.S.E. only operated vessels ultimately owned by Tsourinakis. As stated by Tsourinakis in his deposition:

xxx Having more than one ship and hoping to have more in the future, I felt that instead of having to refer to the various people with whom I must deal on each particular company separately and for insurance purposes for various contracts stores provisions oils fuels and so on and for the purpose of presenting my whole fleet as a unit and for the purpose of running my shipping business in a more practical manner I have formed GDSE and we used to own ourselves the GDSE group of companies, there are certain advantages necessary to get somewhere and make a deal and present ourselves as a sole owner and as the owner of more than one vessel. xxx (A68)

xxx

> As management we do not have any other vessels apart from our own. (p. 8 of Agreed Ex. 75 of 5/22/79, R. Vol. XII)

Each of the Tsourinakis vessels was owned by a separate corporation which had no real function other than to hold title to the vessel. Each vessel was on long term time charter. (Pltf's. Ex. 23 & 24 of 2/7/78, R. Vol. XII.) No evidence was offered at the evidentiary hearing in the District Court on 2/7/78 that any record owner actively participated in the actual operation of the vessel to which it held title. G.D.S.E.'s allegations to the contrary at pages 6-7 of its Petition for Writ of Certiorari are unsupported by any evidence offered at the Evidentiary Hearing of 2/7/78. Cf. transcript of hearing of 2/7/78 (R. Vol. X)

G.D.S.E. can not point in the evidence to a single operating instruction sent by Imbros Shipping Co., Ltd. or by any other Tsourinakis record owner.

The evidence is that vessel crewing, repairing, maintenance, fuel supplies and operating instructions were handled by G.D.S.E. (NR 22, Requests 3 & 4, attached exhibits A & B; NR 82 para. 3 of two page Affidavit and first 8 pages of 9 page Affidavit; Requests 2, 3, 4, 6, 7, 8, 9, and 10 of NR 130 and attached Exhibits 1, 7, 8, 9 & 13, and Responses 2, 3, 4, 6, 7, 8, 9 and 10 of NR 138; A68-A72; Agreed Ex. 24 of 5/22/79 and Agreed Ex.75 of 5/22/79, p. 6-7, R. Vol. XII; Appendix to Pltf's. Brief of 2/6/78, Appendices 16 & 17, R. Vol. XIII; Requests 149-212 and 262-274 of Pltf's. Request for Admission of 11/28/77 and annexed exhibits, R. Vol. XIII; Pltf's. Ex. 2, 3, 7, and 8,

9, 10, 11 & 26 of 2/7/78, R. Vol. XII; Ex. D1-D14, Ex. F1-F5, Ex. H1-H9, Ex. J1-J8, Ex. L1-L21, Ex. N1-N8, and Ex. 13, 17, 18, 21, 22, 26-57, 76-80 attached to Pltf's. Request for Admission 11/28/77, R. Vol. XIII; Ex. 1-10 attached to Request for Admission 8/3/77, NR 114.)

In its Answers to Plaintiff's Supplemental Interrogatories of December 8, 1976 (NR 47), G.D.S.E. stated that it sent written instructions to the masters & Chief Engineers of its vessels (GDSE Ans. to Int. I(3) and V(3) contained in nine page Affidavit, NR 82) and that it received written communications from the Masters of its vessels concerning:

> xxx crew employment problems and maintenance and supplies (sic) matters. They were also reporting on claims anticipated and eventually on damages to the vessel and/or the cargo by third parties (eg. stevedores). From time to time they were sending us their

position. xxx (G.D.S.E. Ans to Interrogatory I.(5) contained in nine page Affidavit, NR 82)

and that:

> Every Master was preparing and sending us for checking and bookkeeping purposes a Master's General Account, every second month. (G.D.S.E. Ans. to Interrogatory I.(7) contained in nine page Affidavit, NR 82)

G.D.S.E. also stated it received written communications from the Chief Engineers of its vessels concerning:

> xxx the condition, as regards maintenance, of the engine room machinery and were eventually requesting certain spare parts. xxx (GDSE's Ans. to Interrogatory V.(5) contained in nine page Affidavit, NR 82)

Between June 29, 1973 and October 2, 1976, the SS IMBROS and three other vessels managed or operated by G.D.S.E. made 18 calls in Virginia, the vessels staying a total of 61 days. (NR 23 and

NR 27; NR 196 is undenied)[4]

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[4] In his Memorandum Order of 8/24/78, Judge MacKenzie pointed out that G.D.S.E. admitted that there were at least 17 G.D.S.E. vessel calls in Virginia and 45 days stay (A7). These figures were given by G.D.S.E. at p. 2 of its District Court Brief of 4/4/78, (R. Vol. XIII). Actually, Virginia calls were as follows: (NR 23 & NR 27; NR 196 is undenied)

Arrived	Sailed
Cyprus M/V IMBROS	
July 26, 1973	July 27, 1973
Jan. 27, 1974	Jan. 31, 1974
Mar. 29, 1974	Apr. 1, 1974
Greek SS RIO DE JANEIRO	
May 24, 1974	May 25, 1974
Aug 8, 1974	Aug 8, 1974
Jan 4, 1975	Jan 5, 1975
Mar 22, 1975	Mar 25, 1975
May 17, 1975	May 22, 1975
Aug 24, 1975	Aug 27, 1975
Dec. 7, 1975	Dec. 12, 1975
Feb. 24, 1976	Feb. 25, 1976
May 5, 1976	May 5, 1976
Jul. 8, 1976	Jul. 9, 1976
Oct. 1, 1976	Oct. 2, 1976
Greek SS BUENOS AIRES	
Dec. 3, 1975	Dec. 5, 1975
Cyprus SS ALEXANDROS T	
Jun. 29, 1973	Jul. 1, 1973
Feb. 19, 1976	Feb. 19, 1976
Jun. 26, 1976	Jul. 8, 1976

During the same period vessels operated by G.D.S.E. made 118 calls at other U.S. ports signing on numerous crewmen, undergoing repairs, purchasing food, fuel and other supplies and undergoing surveys. (Deft's. Ex. 1 of 2/7/78; Pltf. Exhibits of 2/7/78, Nos. 2, 3, 7, 8, 9, 22 and 26, Agreed Exhibits of 5/22/79, Nos. 8, 9, 24, 25, 28, 29, 30, 31, R. Vol. XII; Exhibits attached to Pltf's. Request for Admission of 11/28/77 - Ex. 38-51, & 56, 65-67, F-3, H-1, H-2, H-3, H-4, H-5, H-6, J-1, J-2, J-5, L-1, L-8, L-10, L-18, L-21, N-1, N-2, N-4; Appendix to Pltf's. Brief of 2/6/78 Appendices 16, 17, Appendix to Pltf's. Brief of 3/28/78, App. 23, Pltf's. Request for Admission Nos. 228, 229, 231, 232 of 11/28/77, R. Vol. XIII).

G.D.S.E.'s Port Captains periodically visited its vessels in U.S.

ports. (Ex. 13 attached to Pltf's. Request for Admission of 11/28/77, R. Vol. XIII)

The itineraries of its vessels produced by G.D.S.E. show that G.D.S.E. vessels spent about as much time in port in Virginia as any place else. (Deft's. Ex. 1 of 2/7/78 and Agreed Ex. 17 of 5/22/79, R. Vol. XII)

G.D.S.E.'s activities in Virginia included a variety of ancillary transactions.

Virginia agents were appointed for each vessel visit. (Pltf's. Requests for Admission of 11/28/77, Requests 186 thru 196, R. Vol. XIII; Ex. 1 attached to NR 130;

NR 196)[5]

In December 1975, the month the M/V IMBROS was lost, G.D.S.E. sent its Port Engineer, Ioannis Giannenakis, from Greece to Hampton Roads, Va., to perform tasks in connection with the redelivery of its vessel, SS BUENOS AIRES from its time charterers. (NR 86, NR 130, Ex. 1 of this Brief at P. I) Mr. Giannenakis was in Virginia from December 3, 1975, until December 29, 1975, according to G.D.S.E.'s 12/22/76 answer to Supplemental Interrogatories. (Ex. "1" attached to this Brief at P. I) Thus, on December 18, 1975,

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[5] Plaintiff's Request for Admission of 6/29/78 (NR 196) which is undenied by G.D.S.E., shows that the ALEXANDROS T. called at Hampton Roads, Va. for repairs on Feb. 19, 1976 and that G.D.S.E. engaged Ramsey Scarlett & Co., Inc. as its agent. In June 1976 when the ALEXANDROS T. again called at Hampton Roads, G.D.S.E. engaged W. J. Browning Co., Inc. as its agent. (NR 196)

at the very time M/V IMBROS was lost, G.D.S.E.'s Port Engineer was in Hampton Roads, Virginia, transacting its business in Virginia, if this sworn answer is correct. The dates of his Virginia stay are said to come from his passport. (G.D.S.E.'s Answers to Supplemental Interrogatories lodged 1/3/77, Ex. "1" of this Brief at P. I)

Moreover, G.D.S.E. stipulated before the District Court that:

> "xxx when Mr. Giannenakis visited Norfolk, Virginia, as a port engineer for General Development he received his instructions from General Development and all communications with respect to his activities were to General Development. (NR 86)

Operational instructions were sent to Virginia to the masters of M/V IMBROS and other G.D.S.E. vessels. (P1tf's. Request for Admission of 11/28/77, Requests 169, 170, 177, 178, 179, 186, 192,

194, 201, 261, 262, 263, 264, 267 and annexed Exhibits 15, 19, 20, 41, 50, 51, 57, 21LF, 26LF, 31LF, 40LF, E-1, E-4, G-5, and H-5; Ex. 1(a) of Exhibits in Support of Pltf's. Brief, etc. of 4/19/77, R. Vol. XIII).

Operational reports were sent from Virginia to G.D.S.E. by the Masters of its vessels. (Exhibits in Support of Pltf's. Brief, etc. of 4/19/77, Exhibits 1(d), 1(e), 1(f), 1(g), and 1(h); Pltf's. Request for Admission of 11/28/77, Requests 165, 189 and 191 and annexed Exhibits 47, 48, 49, 23LF, 24LF and 25LF, R. Vol. XIII)

SS IMBROS opened Articles in Virginia April 1, 1974, which were still in effect when it sank. (NR 22, Request 2; NR 23)

SS ALEXANDROS T. called at Hampton Roads, Va. for repairs on February

19, 1976 (NR 196) and passed its annual inspection of cargo gear at Norfolk, July 6, 1976. (Pltf's. Request for Admission of 11/28/77, Requests 189, 191, 192 and annexed Exhibits 24LF and 48, R. Vol. XIII)

On December 4, 1975, G.D.S.E. sent Lavino Shipping Co., (Lavino) Law Building, Norfolk, Virginia, a Telex reading:

> BY RECOMMENDATION OF MESSRS LONE STAR SHIPPING INC, HOUSTON, WE SHOULD LIKE TO APPOINT YOU AS OUR PROTECTING AGENTS AT NORFOLK. xxx (Ex. 1 attached to NR 130)

This agency continued until Lavino was paid on February 4, 1976. (NR 130, Requests 2, 3, and 4 and annexed Exhibit 1)

Acting as agents for G.D.S.E. at Hampton Roads, in December 1975, Lavino incurred charges for pilotage, line

handling, dockage, customs clearance, taxi hire, agency fee, sundries, ship's stores, medical expense, water, auto hiring, postage, teletypes and long distance telephone calls. (NR 130, Request 6 and annexed Exhibits 7 and 8)

Some idea of the activity of G.D.S.E. in Virginia is shown by a few of the cablegrams exchanged between the Master of the SS RIO DE JANEIRO and G.D.S.E. while SS RIO DE JANEIRO was in Virginia. (Ex. 1(a) through (h) attached to Pltf's. Brief of 4/19/77, R. Vol. XIII), Ex. 1(d) is quoted below.

On July 9, 1976, the Master of the SS RIO DE JANEIRO sent to G.D.S.E. a telex via the ship's Norfolk agent reading:

SAILED NORFOLK 8/7 ETA WILMINGTON 9/7 STAY ONE DAY COMPLETE DISCHARGING. LOADING FROM NEW ORLEANS ETA 15/7 BULK SODA ASH TO BAIRES. RECEIVED NORFOLK 50 PCS RINGS MAIN ENGINE AND 6 PCS SCAVENCIN (SIC) RINGS. WOODEN HATCH COVERS GENERATOR RINGS AND AUTO PILOT NOT RECEIVED.

RECEIVED 10867 DOLLARS. CHIEF OFFICER REQUESTS REPATRIATION FROM NEW ORLEANS SEND TICKET. NEW ORLEANS ADDRESS BIEHL AND COMPANY 416 COMMON STR. NEW ORLEANS 70130. TELPH. 581 7788 CABLE BIEHL

REASONS FOR DENYING THE WRIT

POINT I. THE DECISIONS BELOW DO NOT CONFLICT WITH WORLD-WIDE VOLKSWAGEN CORP. V. WOODSON, 444 U.S. 286 (1980) AND HANSON V. DENCKLA, 357 U.S. 235 (1958)

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559 (1980) was a suit under Oklahoma's "long arm" statute and involved a "one shot" contact with the forum state, at best. There, the fortuitous circumstance that an automobile happened to suffer an accident while passing through Oklahoma in 1977, was held to be not a sufficient contact with Oklahoma to support service of process in a products liability action in Oklahoma against the New York auto wholesaler and the New York auto dealer

which had sold the auto in New York in 1976 to New York residents. However, the German auto manufacturer itself and the auto importer apparently had much more substantial contacts with Oklahoma because they remained as Defendants in the Oklahoma litigation after this Court held the New York dealer and the New York wholesaler not to be subject to suit in Oklahoma. Cf. Footnote 3 of World-Wide Volkswagen, supra.

The case sub judice involves a "doing business" statute[6], not a "long arm" statute. The test under a "doing

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[6] Former §8-60 of the Code of Virginia was in effect at the time process was served and provided as follows:

xxx

xxx If a foreign corporation doing business in this state or a foreign corporation transacting affairs in this State has no registered agent in this State, process or notice may be served xxx on the Clerk of the State Corporation Commission. xxx

business" statute is given in Hansen v. Denckla, 357 U.S. 235, 253; 78 S. Ct. 1228, 1239-1240, (1958), thus:

> xxx It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. International Shoe Co. v. State of Washington, 326 U.S. 310, 319, 66 S. Ct. 154, 159, 90 L. Ed. 95.

In Hansen, supra, no activities were conducted in Florida by the Defendant trust company, the only activities were by the trust settlor. Therefore, the Florida Court was held to be without jurisdiction over the Delaware trust company.

In the instant case, G.D.S.E. itself engaged in substantial activities in Virginia, the forum state. During the period July 26, 1973 to October 2, 1976, G.D.S.E. purposefully availed itself of

the privilege of conducting activities in Virginia by appointing Virginia steamship agents to act for it in Virginia, by securing repairs in Virginia, by sending replacement parts to its vessels in Virginia, by sending operating instructions to its masters via its Virginia steamship agents, by purchasing ship's stores and water in Virginia and by sending its own Port Engineer into Virginia to handle the redelivery of one of the vessels operated by it. During this period, SS IMBROS and three other G.D.S.E. vessels made 18 calls in Virginia staying a total of 61 days in Virginia ports. Cf. p. 8-11 and 13-19, supra.

The Virginia activities of a small corporation like G.D.S.E. set forth above constituted doing business in Virginia. Moore-McCormack Lines, Inc. v. Bunge, 307 F. 2d 910 (4 Cir. 1962).

These activities were an essential part of its management and operation of the vessels IMBROS, BUENOS AIRES, RIO DE JANEIRO and ALEXANDROS T. It was not necessary that G.D.S.E. have a place of business in Virginia or employees personally present in Virginia. Moore-McCormack Lines, Inc. v. Bunge, supra, 307 F. 2d at p. 915.

Moreover, even though SS IMBROS and all other G.D.S.E. vessels were time chartered to various charterers and the charters directed at what ports the vessels were to call and what cargo the vessels were to carry, the calls of G.D.S.E. vessels in Virginia constituted "doing business" in Virginia by G.D.S.E. Van Horn v. Waterman Steamship Corp., 71 F. Supp. 347 (E.D. Pa. 1944); Neset v. Christensen, 92 F. Supp. 78, 82 (E.D.N.Y. 1950); Arpad Szabo v. Smedvig Tankrederi

A.S., 95 F. Supp. 519, 522 (S.D.N.Y. 1951); Doris v. Boyd, Weir & Sewell, Inc., 1977 A.M.C. 405 (E.D. Va. 1977); Morewitz, Adm. of Kannes v. Liberian SS EVGENIA G., (E.D. Va. Civ. 76-131-NN, Decision of 2/7/77, Ex. 2 attached to this Brief at P. IV)

Judge MacKenzie, as the trier of fact, found on the evidence presented to him that G.D.S.E. had substantial contacts with Virginia. (A 7-8, 11-12)

Judge MacKenzie's decision was affirmed by a unanimous Court of Appeals. (A 1-4)

Although G.D.S.E. argues that its vessel calls in Virginia were insignificant, examination of the itineraries of its vessels shows that G.D.S.E. vessels spent almost as much time in port in Virginia as any place else. (Deft's.

Ex. 1 of 2/7/78, R. Vol. XII)[7]

Ratliff v. Cooper Laboratories, Inc., 444 F. 2d 745 (4 Cir. 1971) is distinguishable from the present case in that the Plaintiffs in that case were late in filing suit and were "forum shopping" for South Carolina's 6 year statute of limitations because the Plaintiffs were time barred in other states. Defendants were two very large drug manufacturers. One Defendant, Cooper Laboratories, merely solicited mail orders from South Carolina wholesalers and mailed promotional material

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[7] In this connection it should be noted that the itinerary of M/V BUENOS AIRES is not accurate, vessel calls at Santos, Montevideo and Buenos Aires between June 6, 1974 and July 19, 1974, being listed twice for an overstatement of 21 days of time spent in said ports.

to doctors. The other Defendant, Sterling Drug, maintained 5 detail men who lived in South Carolina and promoted its drugs by personal contact with doctors and drugstores in South Carolina and occasionally took orders. The record contained no figures of the amount of sales made in South Carolina nor of the percentage of time spent in South Carolina by the resident detail men in promoting drugs. Both companies were held not amenable to suit in South Carolina.

Here suit was instituted promptly. Petitioner is a small corporation and for its size its proven activities in Virginia were substantial.

In Grevas v. M/V OLYMPIC PEGASUS, 557 F. 2d 65, 68 (4 Cir. 1979), a single vessel call was held not to constitute fairly substantial contacts with Virginia. However, in the present

case there are eighteen vessel calls, plus ancilliary transactions.

Even if there actually were conflicts between earlier decisions of the Fourth Circuit Court of Appeals and its unanimous decision herein, that is an argument that G.D.S.E. should have addressed to the Fourth Circuit Court of Appeals. However, G.D.S.E. filed no Petition for Rehearing below.

POINT II. RETENTION OF DISCRETIONARY JURISDICTION IN THIS CASE IS GOVERNED BY GULF OIL CORP. V. GILBERT, 330 U.S. 501 (1947). THAT PORTION OF THE BELGENLAND, 114 U.S. 335 (1885) RELIED UPON BY G.D.S.E. IS OUT DATED DICTA CONCERNING SEAMEN'S WAGES.

Judge MacKenzie gave two reasons for exercising jurisdiction: (A12-A13)

1. G.D.S.E. had failed to persuade him of the availability to

Plaintiff of an alternative and adequate forum as required by Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947), the evidence being in conflict as to whether the families of any decedents, especially the six non Greeks, had the right of access to Greek Courts, and, if so, whether the non Greeks would have the right of access to the broader sweep of Greek Law.

2. Adjudication in Greece would not have any significant litigation advantages.

As stated by the Court of Appeals for the Fifth Circuit in the recent wrongful death case of Fisher v. AGIOS NICOLAOS V., 628 F. 2d 308, 312 (5 Cir. 1980):

> The fountainhead decision in determining application of the forum non conveniens principle is Gulf Oil corporation v. Gilbert, 330 U.S. 501, 67 S.

Ct. 839, 91 L. Ed. 1055 (1947), a non-maritime case. xxx

In Gulf Oil, supra, this Court discussed the entire question of forum non conveniens at length and pointed out:

> "xxx In all cases in which the doctrine of forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them." (330 U.S. 506-507)

and:

> "xxx unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed". (330 U.S. 508)

G.D.S.E. relies upon out dated dicta concerning foreign seamen's wage claims in The BELGENLAND, 114 U.S. 335 (1885)[8] to argue that forum non conveniens

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[8] By statute this dicta now has no application to foreign seamen's claims for wages due in the United States, 46 U.S.C. 596-599.

applies only to claims for property damage in ship collision cases and not to claims for personal injury and wrongful death.

Fisher, supra, demolishes that argument in these words:- (628 F. 2d at 313-314)

> xxx defendants argue that the Belgenland standard for retaining jurisdiction ('unless special circumstances exist to show that justice would be subserved by declining it', 114 U.S. at 367, 5 S. Ct. at 865) applies only to collisions between foreign vessels and not to suits by a foreign seaman against a foreign vessel or owner - a distinction for which no citation is offered, which has never been noted in the doctrinal literature, and which has been ignored in decisions retaining jurisdiction over suits by foreign seamen against foreign ship parties.

Even if there were an actual conflict between the dicta in The Belgenland, supra, and the principles enunciated in Gulf Oil Corp., supra,

The Belgenland's 19th Century dicta has been superceded by this Court's 20th Century decision in Gulf Oil Corp. Much has changed since 1885 in the manner in which maritime commerce is carried on and in statutory and decisional law. Cf. 46 U.S.C. 596-599 and 688; Hellenic Lines, Ltd. v. Rhoditis, 398 U.S. 306 (1970) and its progeny.

Moreover, in the present case there is no internal economy of a ship to consider. The Cyprus SS IMBROS has sunk and there is no common country to which the multinational dependents of decedents might be relegated.[9]

Zouras v. Menelaus Shipping Co., 1 Cir., 336 F. 2d 209, and Anastasiadis v. SS LITTLE JOHN, 5 Cir., 346 F. 2d 281 are cited by G.D.S.E. in

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[9] There was not even one Cypriot in the crew.

support of its argument that jurisdiction should have been declined. However, in both Zouras and Anastasiadis there was no proof of regular visitation by the vessel at any United States port. In the present case we have a regularity of contacts of SS IMBROS and three other G.D.S.E. vessels with American ports and especially Virginia ports. Cf. pages 8-11 and 13-19, supra.

POINT III. THE DECISIONS BELOW DO NOT CONFLICT WITH LAURITZEN V. LARSEN, 345 U.S. 571 (1953) AND HELLENIC LINES V. RHODITIS, 398 U.S. 306 (1970)

G.D.S.E. argues that the exercise of discretionary jurisdiction is to be mechanically controlled by the same seven factors laid down by this Court in Lauritzen v. Larsen, 345 U.S. 571 (1953), plus the additional factor added

by Hellenic Lines v. Rhoditis, supra, 398 U.S. 306 (1970). However, decisional law is to the contrary. Fisher, supra, 628 F. 2d at 313; Gkiafis v. Greek SS YIOSONAS, 387 F. 2d 461, 462, (4 Cir. 1967).

Lauritzen itself in reversing the lower courts' determination that the American Jones Act rather than a foreign compensation law governed, indicated that a forum non conveniens consideration was not relevant in the determination of the choice of law, even though it "might be a persuasive argument for exercising discretionary jurisdiction to judge a controversy". 345 U.S. at 589-90, 73 S. Ct. 932.

Moreover, Plaintiff does not agree with G.D.S.E.'s analysis of the Lauritzen factors as applied to this case:-

1. Place of Wrongful Acts Causing Deaths - Mobile, Alabama, where G.D.S.E. negligently permitted SS IMBROS to put to sea in the unseaworthy conditions found by Judge MacKenzie to have caused her loss on the high seas. (NR 283)

2. Allegiance or Domicile of Crewmen who were Killed - Nigeria, Pakistan, Honduras and Greece, not merely Greece. Moreover, Chief Engineer Passalis, although a Greek himself, is survived by a Yugoslavian widow and infant daughter living in Yugoslavia, supra, P. 3-4.

3. Allegiance of Defendant G.D.S.E. - G.D.S.E. is a Cyprus corporation.

4. Places of Contracts Signed by the Seamen - Belgium, Nigeria, Honduras and Greece, not merely Greece. Cf. Agreed Ex. 4 of 5/22/79, R. Vol. XII.

5. Inacessibility of Foreign Forum - Greek Courts are not available. Cf. infra p. 35-43.

POINT IV. UNDER GREEK LAW, GREEK COURTS HAVE NO JURISDICTION OF THIS CASE.

Plaintiff's evidence below was that Greek Courts have no jurisdiction over claims by the non Greek surviving dependents who did not reside in Greece at the time of the accident and whose six non Greek decedents did not reside in Greece at the time of the accident and did not sign individual employment contracts in Greece.[10] Articles 5 and 6 of Greek Law

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[10] Although decedent Passalis was Greek, his widow and infant daughter were citizens and residents of Yugoslavia and so had no right to file suit in Greece. (Pltf's. Ex. 14 and Ex. C thereof, R. Vol. XII)

551, (Agreed Exhibit 22 of 5/22/79, R. Vol. XII) Cf. Decision No. 3295/1976 of the Court of Appeals of Athens, Greece. (Ex. 3 of this Brief at p. IX) which shows that the surviving dependents of six non Greek decedents in this case could not sue in Greece because they do not reside in Greece. Said the Athens Court of Appeals in its Decision No. 3295/1976:

> In this case the defendant xxx alleged that claimants had no legal right to file their complaint sub judice seeking recovery according to the Law 551/1914 xxx for the accidental death of their brother while serving as a deck boy aboard Defendants' ship because at all times, including the time of said accident, they were not Greek citizens and resided in Damiette, Egypt. xxx Therefore, for the reasons stated above, the Court below, should have agreed with the Defendant's contentions and rejected the complaint for failure to state a cause of action. xxx

Indeed, Plaintiff's evidence was that Greek Courts did not even have jurisdiction over claims by the Greek dependents of the Greek decedents, and that Greek Courts, in which the issue has been raised, have uniformly held that Greek Courts have no jurisdiction over claims, such as the cases sub judice, where the maritime accident takes place outside of Greece and where no Greek corporations are involved. Mareante Compania Naviera, S.A. v. Emmanuel Stephen Psarras (Decision No. 228/1972 of the Court of Appeals of Athens, Greece, Appendix 11 in Support of Pltf's. Brief of 2/6/78, R. Vol. XIII); Article 13 of Greek Law 551, (Agreed Ex. 22 of 5/22/79, R. Vol. XII); Stamatios Michali nos v. Naciente Compania Naviera, S.A. (Decision No. 998/1972 of Piraeus Court of First Instance, Appendix 13 in support

of Pltf's. Brief of 2/6/78, R. Vol. XIII); Dionysios Frangiskatos v. Konkar Maritime Enterprises, S.A. Panama, (Decision No. 1029/1973 of the Piraeus Court of First Instance, Appendix 14 in Support of Pltf's. Brief of 2/6/78, R. Vol. XIII).

The latest Greek appellate decision on this point is Mareante Compania Naviera, S.A. Panama vs. Emmanuel Stephen Psarras, supra. There, as did the Greek seamen in the case sub judice, the seaman signed an individual employment contract in Greece and then was sent abroad in order to be employed on a vessel outside of Greece. Psarras' vessel was the Greek flag SS AGIOS NIKOLAS, which was owned by Mareante, a Panamanian corporation. Said the Athens Court of Appeals: (Pages 2-3 of Appendix to Pltf's. District Court Brief of 2/6/78, R. Vol. XIII)

> xxx In his Complaint xxx Appellee, a resident of Dryopis of Kythnou, alleged that he was employed in Port Said on January 11, 1965, by the xxx Appellant corporation, which has its registered office in Panama, for service on the Greek flag vessel AGIOS NIKOLAS, as an Oiler; xxx that in October, 1965, while the ship was at sea en route to America, he slipped from a ladder, fell and suffered the bodily injuries mentioned in the Complaint; and that he seeks damages for the said maritime accident.
>
> On the facts alleged, no Greek Court has any jurisdiction whatsoever to deal with the suit in question, which is directed against a foreign company. (Emphasis supplied)

G.D.S.E. in its Petition cites Frangiskatos v. Konkar Maritime Enterprises, S.A., 353 F. Supp. 402 (S.D.N.Y. 1972), 471 F. 2d 714 (2 Cir. 1972) and Mihalinos v. Liberian SS TRIKALA, 342 F. Supp. 1237 (S.D. Ca. 1972) in support of its argument that Greek Courts would take jurisdiction of this case. Yet, when seamen Frangiskatos and Mihalinos

filed suit in Greece subsequent to these two decisions by American courts, the Greek Court held itself to be without jurisdiction. Michalinos v. Naciente Compania Naviera, S.A. Panama, (Decision No. 998/1972 of the Piraeus Court of First Instance), supra, and Frangiskatos v. Konkar Maritime Enterprises, S.A., Panama, (Decision No. 1029/1973 of the Piraeus Court of First Instance), supra.

Without citing a single statute, case or treatise to support his position (A50), Mr. Nicolas Domvros, the Greek attorney representing SS IMBROS' insurer (A-21), attempted to testify that a Greek Court would have jurisdiction of these claims. However, he was forced to acknowledge that Mareante, supra, was dismissed by the Athens Court of Appeals for lack of jurisdiction, even though the injured Plaintiff was a Greek

seaman injured outside of Greece aboard a Greek flag vessel. (A46-47) He was also forced to admit that unless the non Greek crewmen and their dependents were Greek residents and unless the non Greeks had signed employment contracts in Greece, no Greek Court would take jurisdiction of the wrongful death claims. (A49, A54-55; Agreed Ex. 76 of 5/22/79, p. 16-20, R. Vol. XII)

District Judge MacKenzie, as the finder of fact, did not accept Domvros' testimony as conclusive, stating: (A12)

> xxx The conflicting evidence concerning the adequacy of plaintiff's remedy in Greece, given the fact that the cause of action did not arise there and that defendant is not incorporated under Greek law, leaves us unconvinced that justice would be served by relinguishing jurisdiction. Crewmen, other than Greek Nationals, under the circumstances of this case, do not have access to the broader sweep of Greek law.

Indeed, G.D.S.E. admits at page 20. of its Petition that Domvros "did acknowledge that it was a possibility that the Greek Courts would decline jurisdiction in suits brought by non-Greeks".

Greek Law 551 (Agreed Ex. 22 of 5/22/79, R. Vol. XII) provides:

> Article 5 - xxx
> Aliens are entitled to the payment of compensation xxx only as long as they reside in Greece, and xxx only as long as they were residing in Greece at the time of the accident xxx
>
> Article 6 - In the event of death of the injured, the compensation in case 5 Article 3 devolves upon his relatives as follows: xxx d) xxx in the case of aliens that were not residing in Greece at the time of the accident, the available amount of the compensation is sought judicially or extra-judicially by the Minister of National Economy and is deposited at the National Bank of Greece in an interest bearing account and to the credit of the "Workers Care Fund". xxx

> Article 13 - The lawsuits resulting from the provisions of the present law, regardless of the amount, are under the competence of the Justice of the Peace of the place of residence of the defendant or of the place where the accident occurred.

POINT V. G.D.S.E.'s ALLEGATION THAT THE FAMILIES OF PLAINTIFF'S FOUR GREEK DECEDENTS ACTUALLY PURSUED THEIR WRONGFUL DEATH CLAIMS IN GREECE IS UNFOUNDED.

At Page 23 of its Petition, G.D.S.E. states:

> The last point concerns the claims of the Greek families. Wholly unexplained is the district court's failure to decline jurisdiction as to the Greek seamen whose claims were pursued by their families living in Greece. Certainly they have access to Greek courts.

There is not a scintilla of evidence to support G.D.S.E.'s allegations that the families of Plaintiff's four Greek decedents pursued their wrongful death claims in Greece.

POINT VI. EVEN IF A GREEK COURT WERE TO HAVE JURISDICTION, ADJUDICATION IN GREECE WOULD NOT HAVE HAD ANY SIGNIFICANT LITAGATIVE ADVANTAGES.

Adjudication in Greece would not have had any significant litigative advantages. Wherever this case might have been tried, it would have had to be tried largely on documents and depositions. Cf. Lascaratos v. OLYMPIC FLAME, (E.D. Pa.) 227 F. Supp. 161, 163 (E.D. Pa. 1964); Kontos v. SS SOPHIE C., 184 F. Supp. 835, 837 (E.D. Pa. 1960) approved, but vacated on other grounds 288 F. 2d 437 (3 Cir. 1961); Karros v. SS LYRIC, 247 F. Supp. 554, 551 (E.D. Va. 1965).

From March 31, 1974, until her loss, the only surveys of the hull, machinery and wireless of SS IMBROS took place in American ports. The marine surveyors performing said surveys were U.S. citizens and residents. Stowage

of cargo at Mobile, Alabama, for the last voyage was under the inspection of a marine surveyor, who is a U.S. citizen and resident. At the time of the hearing of 2/7/78, these marine surveyors were available to testify in the United States at any liability trial as to the physical condition of M/V IMBROS and the details of her loading. (Agreed Ex. 8, 9, 77, 78 and 81 of 5/22/79, R. Vol. XII; Appendix 16 & 17 of Pltf's. Brief of 2/6/78, R. Vol. XIII; and Pltf's. Request for Admission of 11/23/77, Requests 228-233 and annexed Exhibits 63, 64, 65, 66, 67, R. Vol. XIII)

In fact, when trial on liability took place in the District Court below on 5/22/79, the reports of these American marine surveyors were placed in evidence as Agreed Exhibits 8, 9, 77, 78 and 81 (R. Vol. XII), thus eliminating the need to have each surveyor testify in person.

At the evidentiary hearing on jurisdiction on 2/7/78, the Bill of Lading, the loading plan for the fatal voyage and the Mobile, Alabama Port Log and Statement of Facts were submitted in evidence as Pltf's. Ex. 12 (R. Vol. XII)[11]. The agents who handled the vessel at Mobile, Alabama, and the stevedore personnel who loaded her at Mobile, Alabama, were available to testify if necessary at a trial on liability.

Likewise, the weather records maintained by the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce were then available to be offered in evidence at a trial on liability. (Request 257 of Requests for Admission of 11/23/77 and annexed Exhibits O(a)-O(q), R. Vol. XIII; Agreed Ex. 2 of 5/22/79, R. Vol. XII)

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[11] These documents are Agreed Ex. 5 & 6 at the trial on liability. (R. Vol. XII)

Also available for evidence at the trial were U.S. Coast Guard Search & Rescue Records (Agreed Ex. 1 of 5/22/79, R. Vol. XII) and information from the U.S. Coast Guard explaining its AMVER Plot and AMVER Directory. (Agreed Ex. 26 of 5/22/79, R. Vol. XII; App. 2 & 3 of Pltf's. Brief of 2/6/78, R. Vol. XIII)

Almost a year before Judge MacKenzie handed down his decision of August 24, 1978 (A5-13), Plaintiff had already taken a de bene esse deposition on September 1, 1977, from Dimitra Zorba, the Radio Officer aboard the M/V IMBROS from December 1974 until December 1975. (Agreed Ex. 70 of 5/22/79, R. Vol. XII) Cf. District Court Docket Entry 9/20/77.

G.D.S.E.'s Petition does not even attempt to show that there would be any significant litigative advantages to trial in Greece.

Instead, G.D.S.E. merely cites Fitzgerald v. the CHRYSSI P. GOULANDRIS, 582 F. 2d 312 (4th Cir. 1978), Morewitz v. Andros Compania Maritima, S.A., 614 F. 2d 379 (4th Cir. 1980), and Bekris v. Greek M/V ARISTOTELES, 437 F. 2d 219 (4th Cir. 1971) and alleges that there is a conflict between these decisions and the case sub judice.

Bekris and Morewitz involved Greek flag vessels and in all three cases there were individual employment contracts signed in Greece calling for exclusive jurisdiction of Greek Courts and application of Greek Law. Here, the six non Greeks signed no individual employment contracts in Greece and the contracts signed in Greece by the four Greek seamen have no provisions calling either for exclusive jurisdiction of any Greek Court or for application of Greek Law.

(Appendix 5 to Pltf's. Brief of 2/6/78, R. Vol. XIII)

This case differs from Fitzgerald, Morewitz, and Bekris in that each of those cases involved only Greek seamen whom the District Court found to have adequate remedies in Greece on the evidence presented in each of those cases. Here, Judge MacKenzie found strong evidence that the six non Greek families had no adequate remedies under Greek Law, especially as to its broader sweep. (A-12) Moreover, Judge MacKenzie found the evidence to be conflicting as to whether the four Greek families actually had adequate remedies under Greek Law. (A-12)

What has happened is that the Fourth Circuit upheld the District Court's discretionary determination to decline jurisdiction in Fitzgerald,

Morewitz and Bekris and upheld the District Court's discretionary determination to exercise jurisdiction in this case. Thus, these decisions are not in conflict.

In the words of Fisher, supra, 628 F. 2d at 315:

> xxx (both) the district court's rejection of a forum non conveniens plea and its retention of jurisdiction will not be disturbed on review in the absence of a clear abuse of its discretion in the matter.

POINT VII. NUNEZ-LOZANO VS. REDEREI, 634 F. 2d 135 (5 CIR. 1980) IS NOT IN CONFLICT WITH THE DECISIONS BELOW.

Nunez-Lozano v. Rederei, 634 F. 2d 135 (5 Cir. 1980), did not involve a "flag of convenience" vessel like the Cyprus M/V IMBROS, but a bona fide Norwegian flag vessel manned almost exclusively by Norwegians. The shipowner was Norwegian and had its base of

operations in Norway. The seaman had collected Norwegian Workmen's Compensation.

The Cyprus M/V IMBROS was a flag of convenience vessel with no Cyprus base of operations and was ultimately owned by a Greek citizen. The crew was multinational with not one Cypriot in the crew. It was never in a Cyprus port, but for more than 26 months before its loss was largely engaged in voyages beginning and/or ending in the United States. (Deft's. Ex. 1 of 2/7/78, R. Vol. XII)

In any event, in Nunez-Lozano the District Judge declined to exercise discretionary jurisdiction and his action was upheld by the Court of Appeals for the Fifth Circuit.

Here, District Judge MacKenzie exercised discretionary jurisdiction and

his exercise of his discretion was affirmed by the Court of Appeals for the Fourth Circuit.

CONCLUSION

The facts found by Judge MacKenzie are supported by substantial evidence. Where G.D.S.E. disagrees with these findings, Judge MacKenzie as the trier of fact chose to believe the evidence offered by Plaintiff and did not give credence to what evidence was offered by G.D.S.E. Judge MacKenzie's factual findings were affirmed by a unanimous Court of Appeals and should not be disturbed.

Based on the facts found by him, Judge MacKenzie correctly concluded that valid service of process had been obtained upon G.D.S.E. under former §8-60 of the Code of Virginia and that forum non

conveniens did not apply because G.D.S.E. had not proved the availability of an alternative and adequate forum as required by the teachings of Gulf Oil Corp. v. Gilbert, 330 U.S. at 508. This was no abuse of discretion.

After discretionary jurisdiction had been assumed by the District Court, it proceeded to conduct two trials - first on liability and then on damages. It would be harsh and unjust to require the families of decedents to begin litigation all over again at this late date, especially since G.D.S.E. has now gone out of business. (NR 273)

The judgment below should be affirmed.

Respectfully submitted

Burt M. Morewitz

Burt M. Morewitz
Of Attorneys for Respondent

EXHIBIT "1"

ANSWERS TO SUPPLEMENTAL INTERROGATORIES PROPOUNDED TO DEFENDANT GENERAL DEVELOPMENT AND SHIPPING ENTERPRISES CO., LTD., SWORN TO DECEMBER 22, 1976, IN THE CASE OF MOREWITZ, ADM. V. IMBROS SHIPPING CO., LTD., ETC., ET ALS (E.D. Va., C/A 76-103-NN)

Now comes the defendant, and answers the plaintiff's Interrogatories as follows:

1. IOANNIS ANDREOU GIANNENAKIS, Greek citizen, resident of 108 Metamorphosseos Street, Moschaton, Athens-Greece.

2. Mr. Giannenakis visited Hampton Roads and Norfolk-Virginia on December 1975, namely from the 3rd till the 29th attending redelivery from time-charter of m/v "BUENOS AIRES" on owners' behalf. Before that time Giannenakis was at Houston, Texas between the 12th and the 20th August 1975 attending drydocking of the same m/v "BUENOS AIRES" on owners' behalf.

3. As per his passport, Giannenakis arrived at Norfolk on the 3rd December 1975 and left on the 29th December 1975.

4. Mr. Ioannis Andreou Giannenakis has had no trouble and met no problem with the United States Immigration and Naturalization Service during his aforesaid visit to Norfolk Virginia.

I, THEODOROS MORAITIS of II-I5 Filellinon street, Piraeus, Greece, under my capacity as Assistant Manager of General Development and Shipping Enterprises Co., Ltd.,

MAKE OATH

and state that the matters deposed to hereinabove are within my knowledge and information and to the best of my belief are true.

/S/ (Illegible)
THEODOROS MORAITIS

SWORN AT

This 22nd day of

December 1976

REPUBLIC OF GREECE)
PROVINCE OF ATTICA)
CITY OF ATHENS) SS:
EMBASSY OF THE)
UNITED STATES OF AMERICA BEFORE

SEAL

Subscribed and sworn to before me, the undersigned consular officer of the United States of America at Athens, Greece, duly commissioned and qualified, this 22nd day of December, 1976

/S/ K. F. Herbert
KEVIN F. HERBERT
Vice Consul of the United States of America

EXHIBIT "2"

MEMORANDUM ORDER DATED FEBRUARY 7, 1977, IN THE CASE OF MOREWITZ, ADM. OF THE ESTATE OF KANNES, DEC'D. V. LIBERIAN EVGENIA G., (E.D. Va. C/A 76-131-NN)

The plaintiff obtained a purported service of process upon the person of the defendant, Andros Compania Maritima, S.A. (Andros) by serving the Clerk of the State Corporation Commission of Virginia, pursuant to the Code of Virginia §§ 8-60 and 13.1-119 (1950), as amended). Defendant Andros has filed a motion to quash this service of process. We find that, at all relevant times, Andros was doing business or transacting affairs in Virginia within the meaning of both Virginia and federal law, and we therefore conclude that this service was valid, and that this Court has jurisdiction over the person of Andros.

As alleged in the complaint, Kannes died at sea on November 26, 1976, as a result of the unseaworthiness of the vessel upon which he was employed. Certain wage claims under 46 U.S.C. §§ 596-599 are also alleged.

Plaintiff has not alleged that any of Andros' business acts within Virginia gives rise to the liabilities asserted in this suit. Nor is the contention advanced that Andros is amenable to service of process under Virginia's "long-arm" statute, Code of Virginia §§ 8-81.1 et seq.

Under § 8-60, as opposed to §§ 8-81.1 et seq, our jurisdiction over the person of the defendant is not dependent on the existence of an act within Virginia which gives rise to the liability asserted. Although such an act is a significant factor, especially when

defendant's contacts with Virginia are minimal, it is sufficient under § 8-60 that defendant conducts substantial business within this forum. See International Shoe Company v. State of Washington, 326 U.S. 310, 66 S. Ct. 154 (1945); Moore-McCormack Lines, Inc. v. Bunge Corp., 307 F. 2d 910 (4th Cir. 1962); Goldrick v. D.M. Picton Co., 56 F.R.D. 639 (E.D. Va. 1971); Pappas v. Steamship Aristidis, 240 F. Supp. 692 (E.D. Va. 1965).

Andros has admitted in its answer to plaintiff's Interrogatory XXI(E)(6) that during each of the last five years Andros has "managed" an average of about twenty vessels that are in and out of the port of Hampton Roads, Virginia. In addition, Andros has admitted, in its answer to Interrogatory XXXII, that one of its employees was

"attending to the business of Andros on a vessel other than the EVGENIA G." in Norfolk, Virginia from August 7-12, 1974, and that another employee was engaged likewise from April 7-9, 1975. We find on the basis of these admissions that Andros has conducted substantial business within this forum.

Andros contends that, even if the quantity of its business transactions with the forum are sufficient to justify the in personam jurisdiction of this court, the quality of those transactions is not. The Court of Appeals for the Fourth Circuit in Gkiafis v. Steamship Yiosonas, 342 F. 2d 546, 556 (1965) defined "quality" of the contacts as "their importance to the corporation and their commercial impact on the state". Here, Andros has admitted that twenty of the sixty-three vessels that

it manages have been in and out of this forum during each of the last five years. These vessels mostly carried a cargo of oil to the port of Hampton Roads. We find such contacts to be of the type that is of large commercial impact to both Andros and Virginia. The traditional notions of fair play and substantial justice are not offended by our exercise of jurisdiction over the person of Andros.

For the reasons stated herein, it is ORDERED that the motion of the defendant Andros Compania Maritima, S.A. is DENIED.

/S/ John A. MacKenzie
United States District Judge

Norfolk, Virginia
February 7, 1977

Copies to counsel of record 2/7/77

SMB

EXHIBIT "3"

ENGLISH TRANSLATION OF A PORTION OF DECISION NO. 3295/1976 OF THE COURT OF APPEALS OF ATHENS, GREECE

In the Court below, Claimants xxx sought xxx indemnification because of the death of their brother in an accident occurring during his employment as deck boy aboard Defendant's ship, on which he was serving under a Contract of Employment, details of which are set forth in their complaint. Defendant company appeals from the decision of the Court of First Instance, which partially accepted the complaint, and seeks to reverse said decision xxx.

Aliens (Non Greeks) are entitled to recover under (Greek) Law 551/1914 not unconditionally like Greeks, but only if they were residing in Greece at the time of the accident. This is clearly shown by Paragraph 2 of Section 5 and sub paragraph 2(d) of

Section 6. of Law 551/1914 as codified by Royal Decree of July 20/August 25/1920, which became applicable in seamen's cases after the repeal of Section I, §2, of Law 551/1914 by Law 2193/1920 and was continued by Section 38 of the Introductory Law of the (Greek) Civil Code. Otherwise the recovery is sought by the Minister of National Economy by legal action or out of court settlement and under section 2, §4 of Law 5204 of May 28, 1971 it is collected in favour of the (Greek) Seaman's Home (Ergatiki Estia), a public entity. Aliens (Non Greeks) are entitled to the benefits of said law without the above condition only if there is a treaty between the alien's country

and Greece, or if the law of the alien's country provides for an unconditional protection of foreigners working in that country in the above meaning (Section 5, Paragraph 2 of Law 551/1914 combined with Section 1 of Legislative Decree of January 24, 1923 - Christos Economou, Law of Labor Accidents and Occupational Diseases, §§450 and 710, pages 558, and 886 respectively, A. Toussis Labor Law, volume 2 §92/D & E, pages particularly 63 & 66, see also Emilia Beder Manher-Geroussis, Armenopoulos Magazine, volume 27 pages 157 et seq.)

In this case the defendant xxx alleged that claimants had no legal right to file their complaint sub judice seeking recovery according to the Law 551/1914 and particularly a recovery consisting of 5 years wages for the accidental death

of their brother while serving as a deck boy aboard Defendants' ship because at all times, including the time of said accident, they were not Greek citizens and resided in Damiette, Egypt. Claimants have not disputed this allegation or alleged that there is any treaty between Greece and Egypt recognizing similar rights in favour of Greek persons working in Egypt or that the law of Egypt provides unconditional protection of foreigners working in Egypt. Therefore, for the reasons stated above, the Court below, should have agreed with the Defendant's contentions and rejected the complaint for failure to state a cause of action. As a result, xxx the decision must therefore be reversed insofar as it awards to R.S. and S.S., the two first claimants 106,500 drachmas each.

Furthermore, xxx Claimants' contention that aforementioned provision of Law 551/1915 was repealed by non use is overruled because according to Section 2 of the (Greek) Civil Code, the Law maintains its force as long as another law does not repeal it expressly or impliedly and it is never repealed by non use. Such a manner of repeal of a law is not recognized by the (Greek) Civil Code. Only a provisional Law is automatically repealed - such a law is repealed by the elapse of the time provided in it or by accomplishment of its aim, which is not the case here. (G. Ballis, General Principles, 7th Edition §6 page 15, G. Valintas Interpretation of the (Greek) Civil Code under Section 2, page 12, Athens Court of Appeal of Athens 3253/1956 magazine, Law Archives 40).